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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

**No. 1013**

FRANK PARKER and GEORGE MORAN,  
*Petitioners,*

*vs.*

THE PEOPLE OF THE STATE OF ILLINOIS,  
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ILLINOIS AND BRIEF  
IN SUPPORT THEREOF.**

**State Court Opinions Appended**

WM. SCOTT STEWART,  
*Counsel for Petitioners.*



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FRANK PARKER and GEORGE MORAN,  
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THE PEOPLE OF THE STATE OF ILLINOIS,  
*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI**

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MAY IT PLEASE THE COURT:

The petition of Frank Parker and George Moran respectfully shows to this Honorable Court:

**Summary Statement of the Matter Involved**

Your petitioners have been convicted of conspiracy and sentenced to jail. The judgment of the Criminal Court of Cook County, Illinois has been affirmed in the courts of review for the State. At the trial (R. 4) your petitioners claimed that as they had been previously tried and acquitted that they should not be prosecuted for a second time in this case. The trial court ruled that the previous acquittal did not bar this action and refused to permit the offered proof. When your petitioners asserted their claim in the trial court, it was alleged by them that to

proceed with the present case constituted double jeopardy and deprived petitioners of the right to due process of law as guaranteed by the fourteenth amendment to the constitution of the United States. This claim of the infringement of rights as citizens of the United States was repeated without success in the state Supreme Court and it is upon this denial that this petition is based.

Whether or not your petitioners have been placed twice in jeopardy presents a mixed question of law and fact and narrows itself down to one of identity of offenses. It appears from the record that there existed a gigantic plot to flood the country with counterfeit American Express orders or checks for money. The witness Van Bever (Abst. 7) learned of the plot and arranged with the officials of the Express Company to pretend to carry on with the conspirators in order to discover the leaders, locate the plates and break up the scheme. The defendants Keller and Sexton passed some of the bogus checks upon a department store and a shoe store in Chicago while being watched by Van Bever and the private detectives. They were followed east and arrested in the possession of counterfeit checks after having passed some on merchants in Philadelphia. After conviction and service of their sentence in Philadelphia, Keller and Sexton were returned to Chicago and prosecuted for the substantive offense of forging and uttering the checks on the shoe store. Your petitioners were charged as principals under the law which requires that accessories be so charged, but the theory of the prosecution was that your petitioners were not present but were responsible for the acts of Keller and Sexton because of the conspiracy. Your petitioners were acquitted in this first trial. Then when your petitioners were prosecuted in this the second trial, they offered to show these facts as a defense on the claim that your

petitioners had been in jeopardy. The trial court and the courts of review in the state agreed with the contention made by the prosecutor that the offenses were not the same and therefore had been no jeopardy and we now seek to bring that question here, among others, respectfully contending that the state courts have erred and your petitioners have been deprived of important fundamental rights guaranteed by the XIV amendment to the constitution of the United States.

### **Specification of Errors to Be Urged**

It is respectfully submitted that the judgment should be reversed for the following reasons:

1. The holding by the Illinois courts that there had been no former jeopardy is error.

2. The courts of review erred in refusing to reverse because of the following errors:

(a) The trial court erred in admitting improper evidence on behalf of the People and in not striking same, and in not instructing the jury to disregard said improper evidence.

(b) The trial court unduly limited and restricted counsel for the defendants in the examination of witnesses.

(c) The evidence is insufficient to support the verdict.

The trial court erred in refusing to direct a verdict as requested at the close of the case for the People and at the close of all of the evidence.

(d) The trial court erred in the giving of each instruction given at its own motion and each one given at the motion of the People and the motion of co-defendants.

(e) The verdicts are against the law and the evidence.

(f) Those shown to be principals and actors in the transaction having been acquitted and given immunity, it follows, as a matter of law, that judgment can not properly be entered against these defendants.

3. Each one of the errors committed by the state court deprived the petitioners of due process of law as guaranteed by the XIV Amendment to the Constitution of the United States and the Bill of Rights in the Constitution of Illinois.

### **Basis of the Court's Jurisdiction**

This Honorable Court may by certiorari have this cause certified to it for determination under the act of February 13, 1925, 43 Stat. 936, 937, Ch. 229, amending and re-enacting Sec. 240 (a) of the Judicial Code, 28 U. S. C. A., Secs. 344, 347. The decision in the Supreme Court of Illinois was rendered November 24, 1941, and the petitions for rehearing, filed within the time allowed, were denied on January 15, 1942. (R. 18)

### **Questions Presented**

Do the errors committed in the trial court and sanctioned by the Supreme Court of Illinois combine in depriving your petitioners of the right to a fair trial as guaranteed by the constitution and laws of the United States? Particularly, the main question is whether petitioners have been twice placed in jeopardy and thereby deprived of the protection of due process of law as guaranteed by the XIV amendment to the constitution of the United States.

The principle question narrows itself down to whether or not two prosecutions are in fact and law the same where although the indictments differ in that the first was

for the substantive offense and the second was for conspiracy. It is contended that in determining this question the court should look to the entire record, including the offered evidence, from which it will be seen that the two prosecutions were based upon the same conspiracy as to your petitioners.

The jurisdictional question, of course, is always presented. This petition will be found to be timely and, we trust, in compliance with the rules. This Honorable Court will no doubt recognize the right of petitioners to the protection of the federal constitution. The question as to whether this Honorable Court will take jurisdiction requires that this question be determined. After a state trial court refuses to permit proof of a prior acquittal holding that there had been no former jeopardy, and this holding is affirmed in the highest court of the State, can this Honorable Court look to the record, including the proof offered and so excluded to review the state courts on the federal question there presented?

### **Reasons for Granting the Writ**

The honorable Supreme Court of Illinois has sanctioned a departure by the lower court from the accepted and usual course of judicial proceeding and the state court has decided many important questions of general law in a way probably untenable and in conflict with the weight of authority.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 26374, *The People of the State of Illinois, Defendant in Error v. Frank Parker and George Moran, Impleaded, Plaintiffs in Error*, petitioners (which record is submitted herewith), and that the said judgment of the Supreme Court of Illinois may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

FRANK PARKER and GEORGE MORAN,  
*Petitioners,*

By WM. SCOTT STEWART,  
*Counsel for Petitioners.*





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**BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
 CERTIORARI.**

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**I.**

**The Opinions of the Courts Below**

The opinion in the Supreme Court of Illinois is reported in 378 Ill. 461, 38 N. E. 760, copied in the record herewith at page 8 and appended hereto (p. 21). The opinion of the Appellate Court of Illinois is reported in 310 Ill. App. 307, 34 N. E. 110, and also appended hereto (p. 32). The trial court rendered no opinion, nor was any opinion filed by the Supreme Court of Illinois when the writ of error was originally transferred from that court to the Appellate Court (R. 2).

**II.**

**Jurisdiction**

The judgment was entered in the trial court (the Criminal Court of Cook County, Illinois), but a supersedeas

was allowed by the Appellate Court of Illinois and, as appears from the record herein, the Supreme Court of Illinois affirmed the judgment on November 24, 1941. Under the rules that judgment was not made final until a petition for rehearing was denied on January 15, 1942. The Supreme Court of Illinois has the record, a certified transcript of which is filed herewith.

We respectfully submit that this Honorable Court has decided that if a petition for rehearing is entertained by the higher court of a state, its judgment does not become final until the petition for rehearing is denied (*Puget Sound Power & Light Co. v. King County*, 264 U. S. 22, 23-25; *Citizens' Bank of Michigan City, Ind. v. Opperman*, 249 U. S. 448, 450; *Ohio Public Service Co. v. State of Ohio ex rel. Fritz*, 275 U. S. 12; *Chicago G. W. R. Co. v. Basham*, 249 U. S. 164; *Iowa-DesMoines Nat. Bank v. Stewart*, 283 U. S. 813; *Iowa-DesMoines Nat. Bank v. Bennett*, 284 U. S. 239).

Where the court of last resort, as the Illinois Supreme Court in the case at bar, affirms a final judgment of an inferior state court, the judgment of the highest court is the one reviewable (*Lessieur v. Price*, 12 How. 59, 72, 13 L. Ed. 893; *Fox Film Corporation v. Doyal*, 286 U. S. 123, 126, 52 S. Ct. 546, 76 L. Ed. 1010).

In the case at bar, the federal question was specifically raised during the trial (Abst. 250) in the motion for new trial (Abst. 278) in the trial court and was reasserted in the assignment of errors made in the State Supreme Court (Abst. 281), and therefore we respectfully submit that the federal question was timely and properly raised, even though the Illinois Supreme Court did not expressly refer to our respectful contention as a federal question (*Chicago, Burlington & Quincy R. Co. v. City of Chicago*, 166 U. S. 226, 231, 232; *Johnson v. New York Life Ins.*

*Co.*, 187 U. S. 491, 495; *International Harvester Co. v. Missouri ex inf. Attorney General*, 234 U. S. 199, 206, 207; *Erie Railroad Co. v. Purdy*, 185 U. S. 148, 154).

We respectfully submit, the failure of the State court to pass upon our contention as a federal question is not conclusive upon this Honorable Court (*Chicago, Burlington & Quincy Ry. v. Illinois ex rel. Drainage Com'rs*, 200 U. S. 561, 580, 581; *West Chicago St. Railroad Co. v. Illinois ex rel. City of Chicago*, 201 U. S. 506, 519, 520; *Wood v. Chesborough*, 228 U. S. 672, 676-680). This Honorable Court will determine the inquiry for itself (*Abie State Bank v. Bryan*, 282 U. S. 765, 773; *Broad River Power Co. v. South Carolina ex rel. Daniel*, 281 U. S. 537, 540; *Lawrence v. State Tax Commission of Mississippi*, 286 U. S. 276, 282; *Patterson v. State of Alabama*, 294 U. S. 600, 602; *Ward v. Board of County Com'rs of Love County, Okla.*, 253 U. S. 17, 22; *Davis v. Wechsler*, 263 U. S. 22, 24, 25). In other words, our contention as shown by the record (Abst. 250) was submitted to the trial court as a federal question and was ruled on there against these petitioners, and the point was properly reserved for review as a federal question. The highest court of the state affirmed the lower court after we submitted our contention as a federal question but the high state court did not designate our contention as a federal question.

We respectfully submit that we are not requesting this Honorable Court to re-examine facts tried by the jury. The trial court refused to permit the jury to hear the facts on the subject of former jeopardy, but as is shown by the record (Abst. 252) the trial court passed upon the question as one of law. Therefore our offered facts must be conceded. Our respectful contentions concern the legal effect and sufficiency of the facts so conceded and the theory upon which the case was submitted below and are

questions of law for this Honorable Court (*Kaufman v. Tredway*, 195 U. S. 271, 274; *Dower v. Richards*, 151 U. S. 658, 667; *Graham v. Gill*, 223 U. S. 643, 645; *St. Louis, San Francisco & T. Ry. Co. v. Seale*, 229 U. S. 156, 161; *St. Louis, I. M. & S. Ry. Co. v. McWhirter*, 229 U. S. 265, 277; *Chicago, M. & St. P. Ry. Co. v. Coogan*, 271 U. S. 472, 474; *Seaboard Air Line Ry. v. Padgett*, 236 U. S. 668, 673; *Union Pacific R. Co. v. Huxoll*, 245 U. S. 535, 538; *Baltimore & Ohio Southwestern R. Co. v. Burtch*, 263 U. S. 540, 543; *Brinkmeier v. Missouri Pac. R. Co.*, 224 U. S. 268, 270; *Chicago, Burlington & Quincy R. Co. v. Chicago*, 166 U. S. 226, 242; *Missouri K. & T. Ry. Co. v. Haber*, 169 U. S. 613, 639; *Smiley v. Kansas*, 196 U. S. 447, 454; *St. Louis, I. M. & S. Ry. Co. v. McWhirter*, 229 U. S. 265, 280; *Great Northern Ry. Co. v. Donaldson*, 246 U. S. 121, 124; *Southern Railway Co. v. Lunsford*, 297 U. S. 398; *Mammoth Mining Co. v. Grand Central Mining Co.*, 213 U. S. 72, 73).

Our respectful claim is that the highest court of our State has refused to recognize the rights of petitioners as citizens of the United States which claimed protection of the federal constitution was properly raised. As your Honors know, the use of certiorari to correct error is not infrequent in criminal cases.

So, in the case at bar, there can be no question but what there has been:

- (1) A final judgment;
- (2) The decision sought to be reviewed is by the highest court of the state in which decision could be had;
- (3) The judgment was rendered in a "suit" involving a "case" or "controversy";
- (4) The case presents a substantial federal question;
- (5) The federal question sought to be reviewed was properly raised and preserved in the state courts; and

- (6) The decision of the highest court of the state does not rest upon a state ground which independently and adequately supports the judgment.

So, as your Honors will perceive, the question in the case at bar narrows itself down to whether or not a substantial federal question is submitted, which question, of course, is for decision upon the entire record in the light of the decisions of this Honorable Court and in the exercise of discretion and the supervisory power of this Honorable Court.

We respectfully submit that the inquiry whether a substantial Federal question is involved in the case at bar is not dependent upon whether petitioners are guilty or innocent, as they should have protection against double jeopardy in either event. We respectfully submit, however, that if jurisdiction be taken here we shall be able to show from the record that petitioners were not proven to be guilty by credible evidence and that the errors committed below brought about an improper and unjust result.

### **Statement of the Case**

Reference is respectfully made to the "Summary Statement of the Matter Involved" in our petition (herein p. 1). Also to the opinion of the Appellate Court herein (p. 32) and the opinion of the Supreme Court of Illinois herein (p. 21) and to the record for the facts of the entire case.

### **Errors to Be Urged**

Reference is respectfully made to our petition under a similar heading (herein p. 3).

### **Questions Presented**

The trial court refused to permit petitioners to show that they had been tried before a jury for the same offense and acquitted. It was urged in the trial court and in the upper courts that the trial court erred and thereby deprived petitioners of due process of law as guaranteed by the XIV amendment to the constitution of the United States.

The right of petitioners to protection as against double jeopardy is well established, so the real question narrows itself down to the following:

Petitioners were acquitted on the charge of forgery and uttering. They were later placed upon trial for conspiracy to forge and utter the same papers. It appears that the evidence was the same in both cases and the theory of the prosecution in the first case was based upon the existence of the same conspiracy alleged in both cases. The question presented is, does this constitute the same offense?

Were petitioners afforded a fair trial and due process of law?

Was the evidence sufficient?

### **Constitutional Provisions Involved**

The XIV amendment to the constitution of the United States provides that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

## PROPOSITIONS OF LAW RELIED ON AND CITATION OF CASES.

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### I.

No person shall be twice put in jeopardy for the same offense.

Constitution of Illinois 1870, Art. 2, Sec. 10.

### II.

A violation of this right which is fundamental is a denial of due process of law as guaranteed by the XIV amendment to the constitution of the United States.

*Ex parte Ulrich*, 42 Fed. 587.

### III.

When the question of former jeopardy is presented at a second trial the question of identity of offenses can be inquired into by an inspection not only of the former judgment, but of the pleadings and the evidence and all matters which may disclose the real situation.

*Harding Co. v. Harding*, 352 Ill. 417.

*Neil v. Chavers*, 348 Ill. 326.

*Petition of Blacklidge*, 359 Ill. 482.

*Hoffman v. Hoffman*, 330 Ill. 413.

*Smith v. Auld*, 31 Kan. 262, 1 Pac. 626, 628.

*Davis v. People*, 22 Colo. 1, 43 Pac. 122.

## IV.

In Illinois an accessory can only be indicted and punished as a principal. The judgment of conviction upon an indictment which fails to charge the defendant with the crime as principal will be arrested on motion.

*Fixmer v. People*, 153 Ill. 123.

*People v. Trumbley*, 252 Ill. 29, 35.

*Baxter v. People*, 3 Gilm. 368.

*Coates v. People*, 72 Ill. 303.

*Usselton v. People*, 149 Ill. 612.

## V.

Under their pleas of not guilty the defendants were entitled to prove any defense to the charge including that of former jeopardy and acquittal.

*People v. Greenspaw*, 346 Ill. 484, 486.

## VI.

If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense. And though there have been nice questions in the application of this rule to cases in which the act charged was such as to come within the definition of more than one statutory offense, or to bring the party within the jurisdiction of more than one court, there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense.

*Ex parte Lange*, 85 U. S. (18 Wall. 205), 163, 168.

*People v. Miner*, 144 Ill. 308.

## SUMMARY OF ARGUMENT.

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A.

Under the constitution and laws of Illinois no person should be twice put in jeopardy.

Petitioners were previously acquitted by a jury of the same offense.

It is proper under the Illinois practice to show a former acquittal under a plea of not guilty.

An offer to prove a former acquittal was refused by the trial court. Petitioners claimed at the trial that such refusal denied them due process of law as guaranteed by the Fourteenth Amendment to the constitution of the United States. The ruling of the trial court was assigned as error in the decisions of the federal question in the court of review without effect.

It is proper to look to the entire record in determining the merits of the claim of former jeopardy.

The Fourteenth Amendment is a limitation upon the powers of the state governments.

Due process of law as guaranteed by the Fourteenth Amendment requires that no man can be twice lawfully punished for the same offense.

The point was properly preserved by petitioners.

The power of the state to regulate its local problems is subject to the federal constitution in the matter of double jeopardy.

The adoption of a rule or procedure in the state court cannot foreclose inquiry in this Honorable Court as to

whether in a given case the application of the rule works deprivation of a prisoner's liberty without due process of law.

A right or immunity set up and claimed under the constitution of the United States may be denied as well as evading a direct decision thereon as by positive action.

**B.**

The evidence is insufficient to support the verdict.

**C.**

There can be no guilty accessory without a guilty principal.

**D.**

The trial court erred in rulings concerning evidence, placed undue limitation upon the defense in cross-examination and erred in the matter of giving and refusing instructions.

**E.**

Conclusion.

ARGUMENT.

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The constitution of Illinois provides (Constitution of 1870, Art. 2, sec. 10):

“No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.”

It is fundamental that to violate this provision is a denial of due process of law as guaranteed by the state constitution and the XIV amendment to the constitution of the United States. We realize that your Honors are not particularly concerned in the state constitution or its construction, but we wish respectfully to commence with the fundamental principle that it is improper and illegal to twice put any defendant in jeopardy. As appears from the record (Abst. 250), petitioners were previously acquitted of the substantive offense and then placed upon trial for the second time in the case at bar for conspiracy to commit the substantive offense. Under the law and the practice in the State of Illinois, it is proper to introduce evidence of former jeopardy under the general issue (*People v. Greenspawm*, 346 Ill. 484, 486). Such an offer was made in the case at bar and refused. If any dispute should arise on the facts (such as to identity of parties) it would be proper to submit such disputed facts to the jury under proper instructions. But no dispute as to the facts arose. The trial court held, as a matter of law, that the former acquittal did not bar the present action. The upper courts affirmed this view. We respectfully submit that error was committed in a substantial and important

matter. It is our respectful contention that the trial court erred and should have allowed the proof and should have held that the charge in the previous case and in the case at bar are the same. We understand that ordinarily conspiracy and the substantive offense alleged to be the object of the conspiracy are regarded as separate offenses as held in *People v. Darr*, 255 Ill. 456, 462, but we respectfully contend in the case at bar that the first and second cases were alike.

The courts seem to be in agreement to the effect that when the question of former jeopardy is presented at a second trial the bothersome question of identity of offenses can be inquired into by an inspection not only of the former judgment, but of the pleadings and the evidence and all matters which may disclose the real situation (*Harding Co. v. Harding*, 352 Ill. 417; *Neil v. Chavers*, 348 Ill. 326; *Petition of Blackledge*, 359 Ill. 482; *Hoffman v. Hoffman*, 330 Ill. 413; *Smith v. Auld*, 31 Kan. 262, 1 Pac. 626, 628).

The case of *Davis v. People*, 22 Colo. 1, 43 Pac. 122, illustrates our respectful contention. Two defendants were placed upon trial for robbery and pleaded former jeopardy on the ground that there was a former trial wherein the same defendants were charged with conspiracy to commit the same robbery. The defendants were a man and a woman. The court announced the general rule that conspiracy to commit an offense and the commission of the offense are two separate offenses, and a prosecution in one does not generally bar the other. But upon examining the plea and that which was said by counsel below, it appeared that the man was prosecuted in the former case (wherein he was acquitted) on the theory that he was an accessory not present at the

commission of the crime (although the indictment in the former case charged him with being a principal, as did the second indictment). So the Colorado court concluded that there was necessarily a conspiracy in both the subsequent and the present offense and that it was error to overrule the plea. On the other hand, the woman, who had been convicted in the former trial, was held to be in a different position, and there was no error in overruling her plea for the reason that she was a principal, and it was not necessary to prove a conspiracy as against her in the case then under consideration.

Another case which comes close to the problem presented here is that of *State v. Parmenter*, decided by the Montana Supreme Court, 116 P. (2d) 879. It should be born in mind that in Illinois the prosecution is permitted to prove the existence of a conspiracy in order to establish guilt of a substantive offense, even where no conspiracy is charged in the indictment (*Spies v. People*, 122 Ill. 9). In the *Parmenter* case two embezzlement cases were involved. The prosecutor was able to point to what he claimed to be differences in the two informations. The Supreme Court decided in favor of the defendant on the broad ground that the two cases were alike. We quote:

"It may be conceded that the state might have elected to treat any part of the embezzlement as a separate crime, but the state did not do so in this case. In both informations the crime was charged as one continuous offense as was done in the case of *State v. Kurth*, 105 Mont. 260, 72 P. (2d) 687."

We are not overlooking the many cases holding that two or more distinct offenses may arise out of the same transaction. In such cases there is no double jeopardy (*United States v. Adams*, 281 U. S. 202; *People v. Kidd*,

357 Ill. 133). Our point is that a single conspiracy cannot be split up for purpose of prosecution (*United States v. Owen*, 21 F. (2d) 868). We respectfully contend that the State courts missed our point. That when we offered to show that the two cases were alike, that they were based upon the same evidence, that petitioners had in fact been in jeopardy for the same offense.

Permit us to compare the two cases, the former and the present. The parties are the same and the subject matter and the evidence is the same (Abst. 251). The only disputed question is that of identity of offenses. It is our respectful contention that the offenses are the same. It will be noted that at the trial these petitioners objected as follows (Abst. 251):

“In overruling the objection, your Honor is violating the right guaranteed them by the constitution of the State of Illinois and the United States relative to former jeopardy. That is no person should be placed in jeopardy more than once for the same offense.”

It will also be noted that these points were preserved and assigned as error. We again quote from the record (Abst. 281):

“Each one of the errors committed by the court deprived the defendants of due process of law as guaranteed by the XIV Amendment to the Constitution of the United States and the Bill of Rights in the Constitution of Illinois.”

The constitution of Illinois (constitution of 1870) provides, among other things, as follows:

“No person shall be deprived of life, liberty or property, without due process of law.”

And:

“No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.”

We respectfully represent that to place a defendant twice in jeopardy violates the constitution and laws of Illinois and that since it is a principle of the common law that no one shall be twice placed in jeopardy for the same offense, the trial and commitment of one who has already been tried and acquitted of the same offense is depriving him of his liberty "without due process of law," within the meaning of the Fourteenth Amendment to the Constitution of the United States.

The law on this subject showing the jurisdiction of the federal courts is summed up in the case of *Ex parte Ulrich*, 42 Fed. 587, from which we quote (589):

"The fifth amendment to the federal constitution provides that—

"\* \* \* Nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb. \* \* \* etc.

"It is the settled construction of this amendment that it was not designed to operate as a limitation upon the state governments in reference to their citizens, but was adopted exclusively as a restriction upon federal power. *Barron v. City of Baltimore*, 7 Pet. 243; *Fox v. Ohio*, 5 How. 434; *Twitcheil v. Com.*, 7 Wall. 321. The fourteenth amendment declares that—

"'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws.'

"This is an express limitation upon the powers of the state government. It opens with the suggestive declaration of the dual citizenship of all persons, native and naturalized, and then, in recognition of the maxim of free governments that the obliga-

tion of allegiance is correlative with the duty of protection, it declares that no state shall by any law abridge any of the privileges or immunities secured to the citizens of the United States, nor shall the citizen be deprived of life, liberty, or property without due process of law. What is the purport of the term 'due process of law?' Kent, in his Commentaries, says:

"It may be received as a proposition universally understood and acknowledged throughout this country that no person can be taken or imprisoned, or dis seized of his freehold or estate, or exiled, or condemned, or deprived of life, liberty, or property, \* \* \* unless by the law of the land. \* \* \* The words "by the law of the land," as used originally in *Magna Charta*, in reference to this subject, are understood to mean due "process of law." \* \* \* The better and larger definition of "due process of law" is that it means law in its regular course of administration through courts of justice.' Volume 2, p. 13.

"So the Supreme Court of the United States, in *Murray v. Improvement Co.*, 18 How. 272-276, speaking of this process, said:

"The article is a restraint on the legislative, as well as on the executive and judicial, powers of the government, and cannot be so construed as to leave congress free to make any process due process of law by its mere will. To what principles, then, are we to resort to ascertain whether this process enacted by congress is due process? To this the answer must be twofold. We must examine the constitution itself to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.'

"As there is, confessedly, nothing in the constitution itself in conflict with the idea that the citizen cannot be twice placed in jeopardy for the same criminal offense, in following the direction of the

supreme court, we will find no principle of the common law, grounded upon the great rock of the *Magna Charta*, more firmly rooted than that no man shall be twice vexed with prosecutions for the same offense. That was as much 'the law of the land' as that he should not be tried or condemned without process of law, and the judgment of his peers. Mr. Justice Miller, in *Ex parte Lange*, 18 Wall. 163, said:

" 'If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense. \* \* \* The principle finds expression in more than one form in the maxims of the common law. \* \* \* In the criminal law the same principle, more directly applicable, \* \* \* is expressed in the Latin, '*nemo bis punitur pro eodem delicto*,' or, as Coke has it, '*nemo debet bis puniri pro uno delicto*.' \* \* \* The common law not only prohibited a second punishment for the same offense, but it went further, and forbid a second trial for the same offense, whether the accused had suffered punishment or not, and whether in the former trial he had been acquitted or convicted.'

"Then, quoting the language of Mills, J., in *Com. v. Olds*, 5 Litt. (Ky.) 137, as follows:

" 'Every person acquainted with the history of governments must know that state trials have been employed as a formidable engine in the hands of a dominant administration. \* \* \* To prevent these mischiefs the ancient common law, as well as *Magna Charta* itself, provided that one acquittal or conviction should satisfy the law, or, in other words, that the accused should always have the right secured to him of availing himself of the pleas of *autrefois acquit* and *autrefois convict*. To perpetuate this wise rule, so favorable and necessary to the liberty of the citizen in a government like ours, so frequently subject to changes in popular feeling and sentiment, was the design of introducing into our constitutions the clause in question.'

"And responsive to this same authority, and in recognition of the universality of the principle in question, the learned judge in *State v. Cooper*, 13 N. J. Law, 361, said:

“‘Our courts of justice would have recognized and acted upon it as one of the most valuable principles of the common law without any constitutional provision. \* \* \* And all who are conversant with courts of justice \* \* \* must be satisfied that this great principle forms one of the strong bulwarks of liberty.’

“So the supreme court of the United States says:

“‘It is contrary to the nature and genius of our government to punish an individual twice for the same offense.’ *Moore v. People*, 14 How. 21.

“That this rule of universal justice and law owes not its origin to constitutional declarations, but was designed only to emphasize and preserve it, see *Lee v. State*, 26 Ark. 260; *State v. Snyder*, 98 Mo. 555, 11 S. W. Rep. 1036; *Ex parte Snyder*, 29 Mo. App. 261. And Cooley, in his work on Constitutional Limitations (section 36), says:

“‘We must not commit the mistake of supposing that, because individual rights are guarded and protected by them (constitutions), they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed.’

“As expressive of how deeply rooted this principle of the common law has ever been in the minds and convictions of the American people, as their common, inestimable, heritage of liberty from the institutions and usages of the mother country, the colonists, long before the adoption of the constitution, incorporated the provision respecting due process of law, or the law of the land, in all their local governments; and there has not been a constitution, state or federal, adopted on this continent, which does not contain the provision against double trials and punishment, or punishment after acquittal. It is imbedded in the very bonework of our political and judicial system.”

As was said by this Honorable Court in *Ex parte Lange*, 85 U. S. 163, 168:

“If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offense. And

though there have been nice questions in the application of this rule to cases in which the act charged was such as to come within the definition of more than one statutory offense, or to bring the party within the jurisdiction of more than one court, there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense. \* \* \*

"Hence to every indictment or information charging a party with a known and defined crime or misdemeanor, whether at the common law or by statute, a plea of *autrefois acquit* or *autrefois convict* is a good defense."

The Supreme Court of Illinois said in *People v. Miner*, 144 Ill. 308, 311:

"The defendants having been arrested for a criminal offense, tried before a court of competent jurisdiction, can they, on the application of the people, be tried a second time? This is forbidden both by the common law and our constitution and cannot be done. In Wharton's American Criminal Law, vol. 1, sec. 573, after referring to the provision in the Federal constitution, to the effect that no person shall be subject for the same offense to be twice put in jeopardy, the author says: 'Whether this amounts to anything more than the common law doctrine involved in the plea of *autrefois acquit* has been much doubted. What that doctrine is has been already stated. It is founded, to adopt the summary of Chitty, upon the principle that no man shall be placed in peril of legal penalties more than once upon the same accusation. It has, therefore, been generally agreed that where a man has once been pronounced not guilty on a valid indictment or appeal he can not afterward be indicted again upon a charge of having committed the same supposed offense. At common law, as has been seen, it means nothing more than that where there has been a final verdict either of acquittal or conviction on an adequate indictment the defendant can not a second time be placed in jeopardy.' "

There is to be found a note in 31 L. R. A. (N. S.) 603, on the right to convict for several offenses growing out of the same facts. In *In Re Nielson*, 131 U. S. 672, cited in the above note at p. 717, it was held that the conviction of a person of the crime of unlawful cohabitation was a bar to the subsequent prosecution for the crime of adultery, committed during the same period, where the adultery charged in the second indictment was an incident in part of the unlawful cohabitation for which he had been convicted.

In the *Nielsen* case this Honorable Court recognized the right of your Honors to look to the entire record, and it was held that a judgment in a criminal case denying to the prisoner a constitutional right, or inflicting an unconstitutional penalty, is void, and he may be discharged on *habeas corpus*.

We respectfully refer your Honors to our quotation from the record herein (p. 4), as to the manner in which the federal question was asserted and preserved in the trial court (Abst. 250).

We respectfully submit that if your Honors were to decide the question from the record only, the answer in favor of your petitioners would be simple and easily arrived at. Your Honors will notice that from the record it appears (Abst. 250) that petitioners offered to prove that they had been acquitted of the same charge on the same evidence. The trial court took judicial notice of its records, and we know and the trial court knew that petitioners means that petitioners contended that the charges were the same in legal effect. We respectfully inform this Honorable Court that the previous indictment charged the substantive offense which was the object of the conspiracy, and respectfully contend here, as we did in the

trial court, that the offenses were identical for the purpose of determining the question of former jeopardy.

Your Honors will note that the record shows (Abst. 258) that it contains all of the evidence offered or received at the trial and all of the proceedings.

The Appellate Court held that there was no former jeopardy and that the offer of proof was properly refused (herein p. 4). The Supreme Court in affirming the Appellate Court held that no error was committed but made no specific mention of our point on former jeopardy assigned as error.

Under the practice in Illinois, if petitioners had gone to the Appellate Court in the first instance they might have waived the constitutional questions involved. In order to properly preserve the questions here presented, as is shown by the record (R. 1), petitioners first applied to the Supreme Court for a writ of error to the trial court. The Supreme Court transferred the case to the Appellate Court and later reviewed the affirmance by that intermediate court. So we respectfully submit that the point has been preserved and here presented. Petitioners are on bond approved by the Appellate Court. A stay was granted there to enable them to proceed in the Supreme Court, and that court entered a further stay in order that this petition might be prepared and filed. We presented a petition for appeal to the Chief Justice of the Supreme Court of Illinois and were referred to this Honorable Court. Upon considering the matter further, we decided upon this petition instead.

In *United States v. Sall*, 116 F. (2d) 745, the defendant was convicted upon all counts in a conspiracy to violate the revenue laws. It was held that Sall could not be convicted of the substantive offense of concealing alcohol merely by proof of overt acts of other conspirators (747):

“To hold otherwise would be to ignore the difference in character between the crime of conspiracy and the substantive crimes which may result from it and to enable the government through the use of the conspiracy dragnet to convict a conspirator of every substantive offense committed by any other member of the group even though he had no part in it or even knowledge of it. To permit this would be to open the way for the conviction of a conspirator more than once for the same conspiracy, the substantive counts, being if the government’s theory is accepted in fact merely additional conspiracy counts each alleging one overt act. Where as here but one conspiracy has been shown a defendant may not thus be convicted twice of having joined it, for that would be to place him twice in jeopardy for the same offense.”

The late case of *Milkwagon Drivers Union of Chicago Local 753 et al. v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, involving an industrial conflict which gives rise to anxious difficulties (299) throws some light upon the lesser problem presented by the case at bar. In the *Meadowmoor* case your Honors had the findings of fact made by the master “authenticated by the State of Illinois speaking through her Supreme Court.” Your Honors said (294):

“We can reject such a determination only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guarantee here invoked.” (Free speech as guaranteed by the Fourteenth Amendment.)

In the case at bar the trial court found against petitioners as a matter of fact and law. We respectfully submit that your Honors are not bound by this finding, as your Honors have the record and can perceive that this finding was a mistake which, in effect, deprived petitioners of constitutional rights.

This Honorable Court in the late case of *American Federation of Labor et al. v. Swing et al.*, 312 Ill. 321, recognized again the power of a state to regulate its local problems (325) and said that:

“But not even these essential powers are unfettered by the requirements of the Bill of Rights.”

Your Honors indicated in the *Swing* case that the scope of the Fourteenth Amendment is not confined by the motion of a particular state regarding common law policy whether the limits imposed are defined by statute or by the judicial organ of the state.

In *Lisenba v. California* (opinion December 8, 1941) this Honorable Court dismissed several contentions of counsel as not tenable under the Fourteenth Amendment, but held in considering the constitutional question involved, where the claim is that a confession was obtained by illegal means, your Honors are bound to make an independent examination of the record to determine the validity of the claim. Your Honors said (290):

“The Fourteenth Amendment leaves California free to adopt, by statute or decision and to enforce such rule as she elects, whether it conform to that applied in federal or in other state courts. But the adoption of the rule of her choice cannot foreclose inquiry as to whether, in a given case, the application of the rule works a deprivation of the prisoner’s life or liberty without due process of law.

\* \* \* \*

“As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice.”

As was said in *Norris v. Alabama*, 294 U. S. 587, whenever a conclusion of law of a state court as to a federal right is so intermingled with findings of fact that the latter control the former, it is incumbent upon

this Court to analyze the facts in order that the enforcement of the federal right may be assured.

"Citation of authority for the same principle might be multiplied indefinitely." (*Gt. Northern Ry. v. Washington*, 300 U. S. 154, 167.)

As was said in *Chapman v. Goodnow*, 123 U. S. 540, 548:

"We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a Federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of 709 of the Revised Statutes, as if it had been specifically referred to and the right directly refused."

And in *Honeyman v. Hanan*, 300 U. S. 14, 18:

"Before we may undertake to review a decision of the court of a State it must appear affirmatively from the record, not only that the federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause. *Lynch v. New York ex rel. Pierson*, 293 U. S. 52, 54, and cases there cited. Whether these requirements have been met is itself a federal question. As this Court must decide whether it has jurisdiction in a particular case, this Court must determine whether the federal question was necessarily passed upon by the state court. That determination must rest upon an examination of the record."

## B.

Although we realize that this Honorable Court would not assume jurisdiction to merely review the evidence and examine the merits, we are led to believe that in some cases where jurisdiction is assumed on other grounds

your Honors will look to the evidence to determine, if necessary, the extent of the injury done by the errors below. Petitioners respectfully claim that the evidence is not sufficient to sustain the verdict. We shall not extend this petition with a discussion of the facts. Argument upon this point will be deferred until briefs are filed, if permitted. Suffice it to say that Parker respectfully claims now that about the only evidence against him was furnished by Van Bever (Abst. 7), a disbarred lawyer in the pay of the complainant, the American Express Company, as a detective or undercover man pretending to operate with the guilty persons. Moran claims that his conviction rests principally upon the testimony of accomplices who were discredited and who received consideration and immunity from the State.

### C.

#### **Further Errors Committed.**

We shall also make mention of further errors which, we respectfully submit, contributed to the improper verdict and judgment, and upon which errors we hope to be permitted further argument. The record shows that the defendants Sexton and Keller were acquitted at the trial. Appellants were not claimed to have been present when the substantive crimes were committed; they were prosecuted upon the theory that they were accessories. It is respectfully submitted that where a criminal act is committed through the instrumentality of an innocent agent the person who induced the act is a principal although not present when the act was committed, but one cannot be convicted of an accessory before the fact where the parties who actually took the property and disposed of it have been found not guilty and there is no proof that the property ever came into the defendant's possession, as there can be no accessory without a guilty principal (*People v. Walker*, 361 Ill. 482).

**D.**

Also we respectfully contend that the trial court erred in rulings concerning the evidence, placing an undue limitation upon the defense in cross-examination and erred in the matter of giving and refusing instructions.

**E.****CONCLUSION.**

We respectfully pray that the writ issue in order that we may be permitted under the rules to show the extent and nature of the errors committed and to demonstrate further that petitioners have not been accorded a trial in accordance with the law of the land in keeping with the decisions of this Honorable Court.

As was said by Mr. Justice Holmes dissenting in *Lochner v. New York*, 198 U. S. 45, 76:

“General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise.”

We respectfully submit that if your Honors decide this application on the bare record of the fact that petitioners offered to prove that they had been previously acquitted of the identical offense, the violation of federal rights is clear. If your Honors accept our statement that the indictments were different, general propositions may be found in the books appearing to support the state court, but we respectfully submit that when the questions presented are fully studied double jeopardy, such as has been prohibited, exists.

Respectfully submitted,

WM. SCOTT STEWART,

*Counsel for Petitioners.*





APPENDIX.

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OPINION OF SUPREME COURT OF ILLINOIS.

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Docket No. 26374—Agenda 10—September, 1941.  
Reported in 378 Ill. 461.

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The People of the State of Illinois, Defendant in Error,  
*vs.* George Moran *et al.*, Plaintiffs in Error.

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MR. JUSTICE SMITH delivered the opinion of the court:

Plaintiffs in error, George Moran and Frank Parker, were convicted on a trial before a jury in the criminal court of Cook county, of the crime of conspiracy. They were each sentenced to confinement in the county jail for the term of one year and to pay a fine of \$2000. That judgment has been affirmed by the Appellate Court for the First District. By this writ of error they seek to reverse the judgment of the Appellate Court.

Plaintiffs in error, with eight other defendants, were jointly charged by two counts of the indictment with conspiracy to forge and counterfeit traveler's checks purporting to be made and issued by the American Express Company, with the intent to damage and defraud any and all persons who could be induced to accept said checks as genuine. By two other counts in the indictment they were charged with unlawfully conspiring to falsely utter, publish and pass as true and genuine, said forged and counterfeited checks with like intent. The trial extended

over a period of several days. The evidence covers more than 1150 pages in the record.

The Appellate Court, in its opinion, set out the facts fully and in detail. The statement of facts in that opinion alone covers approximately 23 pages of the published opinion. That opinion is published in full. (310 Ill. App. 307.) To set out the facts here in detail would not only unduly extend this opinion, but would serve no useful purpose. For the purposes of this opinion we refer to the opinion of the Appellate Court where all the material facts will be found, accurately and carefully recited.

It is contended in this court that the verdict rests entirely upon the uncorroborated testimony of accomplices. It is further contended that the trial court erred in its rulings and unduly limited and restricted plaintiffs in error in the cross-examination of some of the witnesses for the People. Two of the defendants were not apprehended. Three others, Hanson, Bruno and Ahrens pleaded guilty and testified for the People. They were each sentenced to serve one day in the county jail. Three other defendants, Hicketts, Keller and Sexton were found not guilty by the jury. The principal witness for the prosecution against plaintiff in error Parker, was one Van Bever. As to plaintiff in error Moran, the People's case depends chiefly on the testimony of Van Bever and Hanson, Bruno and Ahrens, the three defendants who pleaded guilty. Van Bever was employed by the American Express Company to assist in ferreting out the crime and obtaining evidence against the guilty parties. He had been disbarred from the practice of law in the State of California. After his disbarment there he returned to Chicago where, according to his testimony, he has since been engaged in the practice of law. He has never been

disbarred in Illinois. Through his acquaintance with plaintiff in error Parker, he became familiar with the activities which led to the indictment in this case. Shortly after he received information from plaintiff in error Parker, relative to the plan to forge and counterfeit traveler's checks in the name of the American Express Company, he reported to a policeman by the name of Paradowski. He also communicated with the officers of the American Express Company. He was shortly thereafter employed by that company for the purpose of running down and obtaining evidence to be used against the conspirators. It is admitted that a conspiracy as between Hanson, Bruno and Ahrens was established by the evidence.

Plaintiffs in error argue that there is no evidence in the record to corroborate Van Bever, Hanson, Bruno and Ahrens, as to their guilt. They further argue that since these witnesses were accomplices, their testimony could not be used to corroborate each other. It is then contended that Moran and Parker should have been found not guilty because the evidence of the above witnesses was not corroborated. The argument in this connection is based upon a statement in the brief that Moran and Parker had been acquitted by another jury of some greater offense, intimated to be the charge of forging and counterfeiting the traveler's checks referred to in the indictment in this case. This extraneous statement is entirely outside the record and obviously cannot be considered by this court whatever the fact may be. It is then speciously argued, from this false premise, that the conclusion necessarily follows that the jury evidently did not believe Van Bever, but gave plaintiffs in error a short sentence on general principles. Whatever plaintiffs in error hope to gain by this argument, not based on anything in the record, it is certainly of no assistance to this

court. The fair inference is, however, that they intend to state that plaintiffs in error were acquitted by the jury in that case of the offense of forging and counterfeiting traveler's checks and that such charge was contained in the indictment in this case; that the jury found the defendants guilty of the minor offense of conspiracy to utter and publish and pass traveler's checks; that this proves conclusively the jury did not believe the evidence offered by the People and found plaintiffs in error guilty of a lesser offense and imposed a light sentence because of doubt as to their guilt. This argument could not be given any weight even if the facts assumed were true. However, the record does not justify either the statements or the inferences. The indictment contained four counts. Briefly, the first and second counts charged that the defendants conspired to unlawfully and falsely, make, forge and counterfeit, traveler's checks. Counts 3 and 4 charged them with conspiracy to falsely utter, publish and pass, as true and genuine, the forged and counterfeit traveler's checks. It will be seen that in every count of the indictment plaintiffs in error were charged with conspiracy, of which crime they were found guilty by the jury. The statute provided the same punishment for the charge in each count of the indictment.

A further difficulty with the argument for plaintiffs in error on this branch of the case is that they improperly assume that Van Bever was an accomplice and that his testimony could not, for that reason, be accepted or considered by the jury. As a matter of fact Van Bever was not an accomplice. (*People v. Hrdlicka*, 344 Ill. 211; *People v. Dalton*, 355 id. 312.) The mere fact that he led the conspirators to believe that he was joining with them in the commission of the offense when, as a matter of fact, he was doing it only for the purpose of obtaining

evidence against them, did not make him an accomplice. Moreover, it is not the law, as contended by plaintiffs in error, that a conviction cannot be sustained on the testimony of accomplices alone. While the testimony of an accomplice must, as a matter of law, be received with suspicion and acted upon with great caution, nevertheless it is competent evidence and a conviction may be based on such testimony, uncorroborated, if it is of such a character as to convince the jury, beyond a reasonable doubt, of the guilt of the accused. (*People v. Buskievich*, 330 Ill. 532; *People v. Birger*, 329 id. 352; *People v. Looney*, 324 id. 375; *People v. Maggio*, id. 516.) This case, however, does not depend entirely upon the testimony of Van Bever or of the three defendants who had pleaded guilty. We agree with the finding of the Appellate Court that there was much other corroborating evidence and circumstances in the case, tending to establish the guilt of plaintiffs in error.

It is the province of the jury to weigh the evidence and to determine the facts. This court will not disturb a verdict of guilty or reverse a judgment of conviction on the ground that the evidence is insufficient to convict, unless the verdict is palpably contrary to the weight of the evidence or the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. (*People v. Buskievich*, *supra*; *People v. Holton*, 326 Ill. 481; *People v. Nusbaum*, 326 id. 518; *People v. Hicketts*, 324 id. 170; *People v. Thompson*, 321 id. 594.) The jury passed on the facts in this case adverse to the contentions of plaintiffs in error. The trial court denied a new trial and entered judgment on the verdict. That judgment has been affirmed by the Appellate Court upon an exhaustive examination of the testimony in the case. We would not be justified in setting aside the verdict and judgment upon the facts.

Plaintiffs in error contend that they were unduly prejudiced by some of the answers given and statements made by Van Bever while on the witness stand. It is true that some of the statements made by this witness were improper. These improper statements, however, were not made in response to questions asked him by the assistant State's attorney. Such answers and statements were, in each instance, promptly stricken by the court. The record does not justify the claim that there was any improper conduct on the part of the assistant State's attorney in the examination of this witness. Such statements as were improper were voluntary statements made by him and not in response to any questions asked. Most of them were brought out by argumentative questions propounded to him by counsel for the defendants. From a careful examination of the record in this respect we are satisfied the defendants were not prejudiced by these improper statements. In each instance, when such statements were objected to, the court promptly and properly sustained the objections and struck out the statements.

The next objection urged by plaintiffs in error is that they were unduly limited by the court in the cross-examination of witnesses. The most serious complaint is made as to the rulings of the court on the cross-examination of Van Bever. The cross-examination of Van Bever by the attorney appearing in this court for plaintiffs in error, who appeared in the trial court for the defendants Sexton and Hicketts, covers 37 printed pages of the abstract. The cross-examination of the same witness by counsel appearing for plaintiff in error Parker, covers more than 13 printed pages of the abstract.

Counsel in this court has set out in detail in his brief the cross-examination of the witnesses Van Bever and Hanson, which he claims was unduly limited and re-

stricted by the trial court. A careful examination of questions propounded to which objections were sustained, discloses that in every instance the question asked was immaterial and was more in the form of an argument between counsel and the witness than a proper question. The objections were properly sustained. It does not appear from any of the questions to which objections were sustained that any or either of these questions, or the answers thereto, could have shed any light on the inquiries sought to be made. No attempt is made in this court to point out where any injury was done by the ruling on any questions on cross-examination. Plaintiffs in error do not show wherein they were prejudiced by the restrictions of which complaint is made. A review of the cross-examination of these witnesses fails to disclose any basis for such contention. Many of the questions to which objections were sustained were objectionable in form and it is not pointed out wherein the answers to any of the questions were material or vital to the rights of plaintiffs in error. The cross-examination of a witness should be kept within fair and reasonable limits, and the extent to which it may go is largely within the discretion of the trial court. (*People v. Buskievich, supra*; *People v. Andrews*, 327 Ill. 162; *People v. Harris*, 263 id. 406; *People v. Strauch*, 247 id. 220.) No abuse of that discretion appears in this case.

The final contention of plaintiffs in error is that there were errors in giving and refusing instructions. The first instruction objected to is No. 4, given on behalf of the People. The specific objection to this instruction is that it is in conflict with instruction No. 1, given on the part of the People. It is argued that by instruction No. 1 the court defined an accomplice and told the jury that the testimony of an accomplice was liable to grave

suspicion and should be acted upon with great caution. It is said that this renders instructions Nos. 1 and 4 in direct conflict; that by instruction No. 1 the court did express an opinion as to the weight to be given to the testimony an accomplice, while by instruction No. 4 the jury was told that anything the court had said or done should not be understood as an expression of an opinion by the court as to the facts in the case, or the weight to be given to the testimony of any witness. This objection is highly technical. There is no conflict between instructions Nos. 1 and 4. The objections to these instructions are without merit.

The next instruction complained of is No. 6. This instruction defined a conspiracy as a combination of two or more persons to accomplish some criminal or unlawful purpose, or some lawful purpose by unlawful means. The objection is to the last clause of the instruction which is as follows: "Or some purpose not in itself criminal or unlawful by criminal or unlawful means." It is argued that this language made the instructions misleading, because there was no purpose, not in itself criminal, involved in the case. In other words, counsel insists that in defining a criminal conspiracy the jury should have been told, only, that it was a combination of two or more persons to accomplish some criminal or unlawful purpose. Had such an instruction been given it would only be a partial and incomplete definition of a criminal conspiracy, which would have been subject to serious objection. Just how this language in the instruction, to which objection is now made, could have prejudiced the defendants or influenced the jury merely because there was no act, not in itself criminal, involved in the case, does not appear. The objection is without merit.

Instruction No. 7, given on behalf of the People, told

the jury that if the conspiracy charged in the indictment had been proved beyond a reasonable doubt, then the act of any one of the conspirators, in the furtherance of the common design, if proved, would be regarded as the act of all. In the argument, in order to sustain the objection made to this instruction, plaintiffs in error add the words "of the defendants," thereby making the instruction read that if the conspiracy was proved then the act of one of the conspirators would be regarded as the act of all of the defendants. We must consider the instruction as it was given by the court, and not as it is enlarged in the argument in order to make it subject to the objection urged. It is obvious that the addition of the words "of the defendants" by counsel, to the instruction, entirely changes its meaning. The instruction, as given, is not susceptible to the construction placed on it by plaintiffs in error. The word "all" clearly refers back to the word "conspirators" as used in the instruction, as its next preceding antecedent, and not to all the defendants, as argued and supplied by counsel. It was a correct statement of the law and could not have been understood by the jury to make any defendant liable for the acts of members of the conspiracy unless such defendant was proved to be a member thereof, engaged in carrying out the common design. It is further contended that by the court's refusal to give instruction No. 42, offered on behalf of the defendants, and by giving said instruction No. 7, offered on behalf of the People, the jury was told that the acts of Hanson, Bruno and Ahrens were the acts of plaintiffs in error. This contention has already been disposed of.

Instruction No. 42, offered by the defendants and refused by the court, told the jury that a person cannot be put into a crime by the acts and conduct of other persons

alone. That instruction was an abstract statement which had no application to any fact, or testimony, in this case.

The objection of counsel to the refusal of the court to give instructions Nos. 43, 44 and 46 is that these were the only instructions offered relating to the defense of entrapment. No. 43 told the jury that if the agents of the express company acted in such manner as to induce an innocent person to commit a crime, or if the jury had a reasonable doubt on this subject, the defense of entrapment was available. Refused instruction No. 44 was, in substance, that acts, otherwise criminal, done at the instigation and by the encouragement of a detective do not constitute a crime. Instruction No. 46 told the jury that if a person was wholly induced to commit a crime by one acting as an agent of, and in concert with, the person against whom the crime is to be perpetrated, he cannot be held accountable, because such action on the part of the agent and owner is an entrapment of the perpetrator. We agree with the Appellate Court as to this objection, that it is sufficient to state that these instructions did not apply to any theory of defense of plaintiffs in error. These instructions related solely to the defense of entrapment, advanced by the defendants Sexton and Keller. The instructions had no application to plaintiffs in error upon the record, since both of them denied they knew anything about the counterfeit checks and denied that they had any knowledge of the conspiracy or participated in it. The plaintiffs in error did not at any time contend that they were entrapped into the conspiracy or the commission of the crime. They at all times denied that they had any knowledge of or connection with the conspiracy or participated therein. Not only did these instructions not apply to any theory of the defense offered by plaintiffs in error, but they were directly contradictory to the defense made by them.

Refused instruction No. 45 is as follows: "If you acquit Sexton and Keller because of a reasonable doubt as to their criminal intent, you can not regard them as principals to Moran, Parker and Hicketts, and the last named should also be acquitted as to the acts and deeds of Sexton and Keller. In other words, you can not have in law an innocent principal with a guilty accessory."

There are two sufficient answers to the objections made to this instruction. If the instruction be read as it is written it could only apply to the defendant Hicketts, who was acquitted. It tells the jury that in the situation stated in the instruction they should acquit "the last named," which is Hicketts. If so construed, it had no application to plaintiffs in error and they are in no position to object to it. If that language be interpreted as telling the jury that in the situation stated in the instruction they should acquit Moran, Parker and Hicketts, then it is erroneous and for that reason was properly refused. All of the defendants were named in the indictment as principals. Those who were tried were tried as principals. The charges in the indictment were joint against all of the defendants named therein. The charges against Sexton and Keller were the same as the charges against Moran, Parker and Hicketts, and all other defendants named in the indictment. No one of them was charged or tried as an accessory. They were all principals named in the indictment and tried as such.

From the most careful examination of the record in this case, we are satisfied that the verdict of the jury is supported by competent and credible evidence and that no errors of law have intervened which resulted in prejudice to plaintiffs in error or either of them.

For these reasons, the judgment of the Appellate Court for the First District, affirming the judgment of the criminal court of Cook county, is affirmed.

*Judgment affirmed.*

**Opinion of Appellate Court.**

(Reported 310 Ill. App. 307.)

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MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

This writ of error is brought by Frank Parker and George Moran to review a judgment and sentence rendered against each of them on verdicts of a jury which found them guilty of conspiracy as charged in the indictment. They with eight other defendants were charged by two counts of the indictment with conspiracy to forge and counterfeit travelers' checks purporting to be made and issued by the American Express Company, with intent to damage and defraud any and all persons who could be induced to accept said checks and pay the alleged conspirators money or property therefor; and by two other counts with unlawfully conspiring to falsely utter, publish and pass as true and genuine said forged and counterfeited checks with like intent.

Two of the defendants, Carl Silver and Frank Quigley, were not apprehended. Three others, Berger Hanson, Del F. Bruno and Emil Ahrens, who testified for the state, pleaded guilty and were each sentenced to the county jail for one day, the sentences to be considered served on recommendation of the state's attorney. The jury returned a verdict of not guilty as to defendants Frank Hicketts, alias Frank Ross, Daniel Keller and Robert Sexton. As already stated there were verdicts of guilty as to defendants Parker and Moran and they were each sentenced to serve one year in the county jail and to pay a fine of \$2,000. This writ of error was

originally sued out of the Supreme court, which transferred it to this court.

The record contains more than eleven hundred pages of testimony, but we think the following outline of the essential facts and circumstances in evidence will afford a proper understanding of the questions presented.

Defendant George Moran testified on cross-examination that he had known Carl Silver about fifteen or sixteen years; that he and Silver had both been in the "bootlegging business" and transacted business with one another; that he saw Silver frequently until the "end of prohibition" and had quite a few business dealings with him during that time; and that "after prohibition" he saw Silver on several occasions and had some business transactions with him. Moran further testified that he met the defendant Frank Parker in Chicago during "prohibition days" and had some transactions with him in the "bootlegging business;" and that he continued to have business transactions with Parker until April 21, 1938, when he and Parker were arrested.

Berger Hanson engraved the plates and printed the counterfeit American Express Company travelers' checks. Defendant Carl Silver met Hanson about January 3, 1938, and, after showing him an American Express Company travelers' check, asked him if he could counterfeit same. In response to a telephone call Hanson met Silver about a week later and informed the latter that he could counterfeit the checks and that it would cost \$500 or \$600 and take three or four weeks to do the work. Silver said that he would talk to his people about it. Silver picked Hanson up at his place of business in the Rand McNally Building at Clark and Harrison streets on February 11, 1938, and drove to an office of the American Express Company on Randolph street between Wabash and Mich-

igan avenues. Silver left Hanson in his car and went into the office of the American Express Company, where he purchased five travelers' checks, one of the denomination of \$100, one of \$50, two of \$20 and one of \$10. Silver returned to his automobile and gave all the checks to Hanson except one of the \$20 checks, explaining that they were the copies for reproduction. On that occasion, after Silver gave Hanson \$100 in cash, he told him he would give him more later and that they could get rid of \$100,000 worth of the checks in Chicago and \$50,000 worth in Kansas City. Hanson started to work on the plates for the checks on February 13, 1938, and finished making them about March 20, 1938. He had printed checks of the face value of \$20,000 from these plates on March 24, 1938. In engraving the plates and printing the counterfeit checks, Hanson was assisted by defendants Emil Ahrens and Del F. Bruno. March 26, 1938, Hanson again met Silver and after giving the latter samples of the checks that had been finished he told him that the job was not good enough and that he would have to "make the whole thing over," which would take another two weeks. Later that same day, at Silver's request, Hanson went to Jake's book at Grand avenue and State street, where he met George Moran and Silver and talked with them about the checks. Moran stated that he thought that it was a poor job, that the numbers were not even and made other comments concerning the quality of the work. Hanson told Moran that he was going to make the plates over. Hanson next met Moran at Jake's book about March 30, 1938, and they had a further discussion concerning the checks. Moran requested Hanson to meet him at Jake's book again on April 2, 1938, at which time Moran told him that he had a man who wanted \$11,000 worth of the checks and that they had to be perfect.

Moran said that he wanted these checks as soon as possible and Hanson told him that he would have them ready in about two weeks. A few days later, about April 5, 1938, Hanson went to Jake's book at Moran's request, taking with him some black proofs that he had made from the new plates. Moran looked at the proofs and suggested some corrections, which Hanson agreed to make. About April 13, 1938, Silver went to Hanson's place of business, obtained two sample checks, one of the denomination of \$50 and the other of \$100, from each of which Hanson cut off a corner so that Silver could not use them. These samples were printed from the new plates. That afternoon Hanson went to Jake's book, where he met Silver and Moran and the latter said, "You fellows are putting yourselves in a hot spot \* \* \* the West Side bunch were putting up all the money for the checks and that they had given Silver \$1,800." Hanson told them that he did not know anything about the \$1,800, but that if Silver had received that much from "some West Side bunch," Silver should give him some more money. Following this discussion Moran told Hanson to print an additional \$25,000 worth of checks after he had printed the \$11,000 worth of checks, concerning which Moran had talked to him a few days before.

Moran in his testimony admitted the meeting with Hanson and Silver just referred to, but stated that the purpose of this meeting was to assist Silver in collecting some money from Hanson. In this connection Hanson testified that he never owed Silver any money and nobody ever stated or suggested to him at any time or place that he did owe money to Silver.

At the time of the meeting between Silver, Moran and Hanson at Jake's book on April 13, 1938, the defendant Bruno was in Kansas City. When Hanson left George

Moran and Silver at Jake's book on that occasion, he stopped at a Postal Telegraph office and sent the following telegram to Bruno in Kansas City: "George wants 36,000. Should we make them. Will be at office tonight. Berger." The original of this telegram in Hanson's handwriting was received in evidence after it had been produced by the Postal Telegraph Company upon the trial of this cause. Bruno received the telegram and called Hanson on the long distance telephone from Kansas City on the evening of April 14, 1938. On April 17, 1938, Hanson met Moran by appointment on Harrison street between Clark and LaSalle streets, where Moran was waiting in an automobile. Moran asked Hanson if the checks were ready and when the latter inquired, "How do you expect to get any work done if you do not pay for it," Moran said, "To hell with you guys" and drove away. About 10 a.m. on April 18, 1938, Hanson again met Moran by appointment at the corner of Grand avenue and State street. When he arrived there Moran said to him, "Berger, you got to go along with us or else we will all be broke." Hanson told Moran that he would have to be paid for the work he had done and Moran agreed to get him some money the next day. Hanson then promised to deliver the checks to Moran that evening. Moran telephoned Hanson at the latter's place of business about 7 o'clock that evening and Hanson agreed to meet him at the same place where he had previously met him on Harrison street. Bruno and Ahrens were at Hanson's place of business when the latter received Moran's telephone call. Hanson, Bruno and Ahrens proceeded to wrap up the checks, putting each denomination in a separate package and then wrapping the three packages in one bundle. The three packages contained checks of the face value of \$42,000. Hanson

and Bruno left with the checks and delivered them to Moran, who was waiting for them in his automobile on Harrison street between Clark and LaSalle streets.

Defendant Bruno testified that he accompanied Hanson when the latter met Moran on April 17, 1938, and on April 18, 1938, and that he saw Hanson hand Moran the bundle containing the counterfeit checks in denominations of \$20, \$50 and \$100 and that they had an aggregate face value of \$42,000.

Defendant Ahrens testified that he had been a printer for about thirty years and that he assisted Hanson in printing the checks; that the checks were in denominations of \$20, \$50 and \$100 and that he helped to wrap the checks which Hanson and Bruno took out of the former's shop April 18, 1938.

Emile V. Van Bever was a witness for the state. He had a law office in a suite in the Reaper Block, which he rented from one P. L. Adix, who was the lessee of such suite. Van Bever had met defendant Frank Parker in November, 1937, and had seen him occasionally when he came into Adix's office to dictate letters to the latter's stenographer. About February 20, 1938, Parker went into Van Bever's office and told him that there was going to be a deal on "some paper." Van Bever asked him what kind of a deal and Parker said that it had to do with American Express Company travelers' checks and told him that when the checks were ready Van Bever might know some people who would be interested in them and that he could make himself a "little money." Parker said that the checks would be ready in the near future and that he would keep in touch with Van Bever. At about that time Frank Ross [Frank Hicketts] had been in the habit of accompanying Parker to Adix's office, where Van Bever saw him a number of times.

About the first part of March Ross told Van Bever that Parker had told him that he had spoken to Van Bever about the "paper deal." Ross also told Van Bever that he could get him all of the checks he wanted at 15%.

Van Bever went to Savannah, Georgia, about March 16, 1938, and just before he left he had a talk with Walter Paradowski, a member of the Chicago Police Department assigned to the detective bureau. Upon his return to Chicago Van Bever again talked to Paradowski on the telephone and talked with him personally a day or two later, on March 25, 1938. After these talks with Paradowski Van Bever telephoned Parker on April 1, 1938, and told him that he thought he had somebody "who was interested in some of the paper and that they wanted a sample." Parker arranged to meet Van Bever at Adix's office that afternoon and give him a sample. Adix had moved his office to 520 N. Michigan avenue. When Van Bever arrived and stepped off the elevator on the third floor and approached room 316, where he and Adix were located, he saw Parker talking with George Moran. Van Bever spoke to Parker and went into room 316 and when Parker entered the room a short time later he asked Van Bever why he had not spoken to George and Van Bever told him that "he did not suppose that George would be interested in having anyone recognize him in public." At that time Parker handed Van Bever an envelope in which he found a counterfeit American Express Company travelers' check with the word "canceled" written in the lower right hand corner thereof. This check was received in evidence.

After receiving the check from Parker, Van Bever immediately delivered it to Paradowski. That evening Van Bever met several representatives of the American

Express Company and it was arranged that he would start working on the case for said company. He continued to work actively on the case until after May 5, 1938. During all the time he was engaged in the work concerning which he testified, he talked with representatives of the American Express Company daily and he also talked with Paradowski, the police officer, at least once or twice a week. Under Van Bever's arrangement with the American Express Company officials he was to continue to consort with Parker and make Parker believe that he was sincerely interested in the enterprise so that he might ascertain what persons were engaged in the conspiracy and just what they were doing. The American Express Company in accordance with its agreement with Van Bever paid him \$170 a week for his services.

On April 5, 1938, Van Bever met Parker on the sixth floor at 30 N. LaSalle street, where Parker occupied desk space in the office of a public stenographer named Miss Springer. Van Bever had lunch with Parker that day in Martin's Cafe at 33 N. LaSalle street. Harold Keyes, an inspector for the American Express Company, by previous arrangement with Van Bever, was in the restaurant and observed the meeting. On this occasion Parker told Van Bever that everything was going along all right on the "paper deal" and after lunch he asked Van Bever to go with him to his office. When they arrived there Parker asked Van Bever to wait a few minutes and "go down the street with him." Parker not being quite ready to leave, Van Bever excused himself and went down on LaSalle street, where he met Keyes and had a conversation with him. Then he returned to Parker's office and told the latter that he was anxious to get hold "of some of that paper," that he had a buyer and wanted to know definitely when it would

be ready. Parker told him it would be ready in a few days. As they started to walk north on LaSalle street Parker said to Van Bever, "I want you to go down the street with me, I want you to meet a fellow that used to be a bodyguard for Jerry Horan here, his name is Frank Quigley, I want to introduce you to Quigley as being the head of this deal, everybody is trying to get in on it, wants to put this paper on the cuff and I don't want to do that, so you just tell him you are handling it and you are the head of it, in that way they will keep from bothering me, that they want this paper on time." On the way to Ahern's saloon Parker also instructed Van Bever to tell Quigley that the price of the paper was 20% and that it had to be cash. When they arrived at Ahern's saloon, Parker introduced Van Bever to Frank Quigley, saying, "Quigley, I want you to meet Von, Von here is the head of this deal and anything that he does is all right." Quigley and Van Bever seated themselves in a booth and had a conversation about the checks. Quigley stated to Van Bever that he could not get any definite idea about when the paper would be ready and that he did not know just what to think about it. He said he and the other "pushers" wanted to get started. Van Bever told him that he thought everything would be ready in a few days now and that "the price would be 20% and it had to be cash." Quigley then told Van Bever that he had some cards printed, "using the name of J. A. Carpenter, a traveling auditor for the Standard Oil Company." Van Bever said that he would like to see the cards because he might want to show them to some of the other boys who were in on the deal. Quigley went to the back bar, took out a package and went to the basement, followed by Van Bever. He extracted some cards from the package and Van Bever picked up

four or five of them and put them in his pocket. One of these cards was received in evidence. After they returned to the bar roof Quigley and Van Bever had some further conversation about the deal. Parker made an appointment to pick Van Bever up at the Medinah Club at 6:15 that evening and left the saloon.

Harold Keyes, the agent of the American Express Company, followed Parker and Van Bever to Ahern's saloon on the afternoon of April 5. He went to the rear of the bar, sat on a bench there and ordered a drink. He saw Quigley take a package from the back bar, go to the basement with Van Bever and return. He heard Parker introduce Van Bever to Quigley and tell Quigley, "You can talk to Van, Quigley." Keyes testified that he joined Van Bever at the Pure Oil Building after they left the saloon and that Van Bever gave him one of the A. J. Carpenter cards that Quigley had produced.

That evening Parker picked Van Bever up at the Medinah Club and took him out to his apartment for dinner. While they were there Parker called a number of the telephone and said, "Is Mr. Hanley there? Is George there?" and then hung up. Moran testified at the trial that when he was arrested he was living at 240 E. Delaware place with his wife under the name of Mr. and Mrs. George Hanley.

On April 7, 1938, Van Bever called Parker on the telephone from the office of the American Express Company. Joseph T. Walsh, financial manager of the Express Company, listened in on another telephone and heard the conversation. In that conversation Van Bever told Parker that he had a letter from New York and read it to Parker over the telephone. He told him that he had a man who wanted \$1,000 of the paper and wanted to get it at 15%.

Parker said that he would absolutely arrange it so that Van Bever could get it. Parker then told Van Bever to meet him at Trafton's Gymnasium at 2 o'clock. Mr. Walsh testified that he took this entire conversation down in shorthand and that it was as Van Bever related it.

On April 8, 1938, Parker told Van Bever to go and see Quigley again at Ahern's saloon, which he did. On that occasion Quigley told Van Bever that he wanted him to meet some men who were coming in from Canada the following Sunday. He asked Van Bever who was going to take care of the backs for the checks and Van Bever told him he would let him know. After leaving the saloon Van Bever went to Parker's office and discussed Quigley's conversation with him. Parker told him it would be all right to meet the people from Canada on Sunday and also told him that everybody had to buy their own backs for the checks.

On April 9, 1938, Van Bever saw Quigley in Ahern's saloon and Quigley showed him a billfold containing an identification card and a small photograph of himself. Quigley said that he had to have his name and address typed in and Van Bever suggested that he would take the card, have it done for him and return it. Quigley told him the address he wanted to put on it. Van Bever took the card to the office of the American Express Company and gave it to Mr. Keyes and after the name and address had been typed on it, he returned it to Quigley. The card and small photograph were received in evidence. The card had typed on its face: "A. J. Carpenter, 3500 Sheridan Road, Chicago, Illinois." Keyes testified that Van Bever brought the card to him on the evening of April 9, and, after talking with Van Bever about it, he typed the name, "A. J. Carpenter, 3500 Sheridan Road, Chicago, Illinois," and gave it back to Van Bever. When

Quigley was arrested in Pittsburgh on April 21, 1938, the billfold containing the identification card and small photograph just referred to were in his possession. In Pittsburgh he used the name, "A. J. Carpenter" in signing the counterfeit checks which he passed there.

It should be noted at this point that it was on April 13, 1938, that Hanson turned over to Silver two sample checks with the corners cut off, one of the denomination of \$50 and the other of \$100. The following morning Ross, alias Hicketts, who had been frequenting Adix's office with Parker and had previously talked with Van Bever about the "paper deal," went to Van Bever's room in the Medinah Club and handed him two counterfeit American Express Company travelers' checks, one of the denomination of \$50 and the other of the denomination of \$100, the lower left hand corner of each of which had been clipped off. Ross asked, "How do you like these?" Van Bever said, "Frank, now that begins to look like something, let me take them, I want to take them to whoever wants to buy them or bid on some of that paper." Ross said that it would be all right for Van Bever to take them but he had to have them back at 12 o'clock. Van Bever took the checks to the office of the American Express Company and showed them to Joseph T. Walsh, the financial manager, Harold C. Keyes, Harry C. Eldridge, a special agent, Charles C. Troyana, a special agent, and Charles J. White, the general manager, all of whom testified that they saw those checks on that day.

On the afternoon of April 13, 1938, Mr. Walsh of the American Express Company, gave Van Bever \$150 in cash to buy \$1,000 worth of the counterfeit checks at 15% and the same afternoon Troyana met Van Bever in the lobby of the Medinah Club and had a talk with

him. He then sat on a chair facing a settee in the front lobby. A short time thereafter Ross came in and Van Bever sat down with him on the settee near Troyana. Van Bever paid Ross some money for some work which Van Bever had arranged for Ross to do so that Van Bever could keep in close contact with him. This work consisted of looking up some records in the offices of the clerks of the Superior and Circuit courts. Troyana testified that, while they sat in the lobby of the Medinah Club, Van Bever asked Ross "By the way, is that stuff ready?" Ross said, "Come with me now up to George's house." Van Bever said, "No I don't want to go there." Ross said, "It is only three blocks from here." Van Bever said, "I don't want to go, you go there." Ross said, "What the hell are you afraid of? I am with you." Van Bever said, "No, I don't want to go, you 'phone him." Ross went to the telephone and reported that the line was busy. While he was gone Troyana talked with Van Bever and left the Medinah Club. He waited outside and fifteen minutes later saw Ross leave. After Troyana left Van Bever and Ross went back to the telephone booth and Ross dialed a number. Van Bever heard Ross say, "Is George there." After a few moments, Ross mentioned him to come nearer to the receiver so he could hear. Ross said, "George, I wish you would do that for me, I am trying to help a friend and make a little money for myself." The other party to the telephone conversation said, "Well Frank, you know I can't do that, I got stuck last year on that deal and it cost me five grand, I can't do anything under \$5,000 worth." Ross said, "Well, all right George" and hung up.

On April 15, 1938, Van Bever met Parker about noon. Parker asked Van Bever to go and see Quigley with him. On the way to Ahern's saloon, Parker said to Van Bever,

"I have O.K.'d Quigley with the Dagos for \$10,000 worth of the paper." Van Bever then asked where he came in and Parker told him that he would get \$11,000 worth of the paper and give Quigley \$10,000 and the other \$1,000 would be for Van Bever. When they got to Ahern's saloon Van Bever told Quigley that Parker said he could get \$10,000 worth of the paper and the "stuff" would be ready in a few days. Quigley asked him to drop in the next day and he would have some boys there he wanted him to meet. He said that he and four men were going to take Pittsburgh and Philadelphia and that they wanted to get started. This was a day or two after Moran had told Hanson, "After you get through with this \$11,000 worth of checks, why you print up \$25,000 more and make them all in one delivery."

On April 16, 1938, at about 2:30 or 3 p.m., Van Bever went to Ahern's saloon and saw Quigley at the bar with two men. Quigley told him, "You are just the man I want to see, tell these boys when this stuff is going to be ready. I want you to meet Mr. Sexton and Mr. Driscoll." Van Bever said, "Well, boys, I think everything will be ready in a few days." Parker came in about that time and Van Bever said, "Come here, Frank, tell these men when that paper will be ready." Quigley then introduced Parker to Sexton and Driscoll and Van Bever walked to the front of the saloon. Parker came up to where he was and said, "What are you trying to do, put me in the middle, I do not want to meet any of these people." Van Bever replied that "he thought Parker should tell them when the stuff was going to be ready." That evening Parker called Van Bever on the telephone and said to him, "Van, you are absolutely right about the ink on those checks, or the color of them, the boys are going to work all night tonight and all day

Sunday to get them out, so stand by and I will let you know," to which Van Bever replied, "All right." As heretofore stated this conversation took place on April 16, 1938, and it will be recalled that Hanson testified that Moran tried to get him to deliver the checks on Sunday evening, April 17, 1938, and that they were actually delivered to Moran, according to Hanson and Bruno, on Monday evening April 18, 1938.

Mrs. Bernice Quigley, the wife of Frank Quigley, testified that on the morning of April 19, 1938, she was in the bathroom dressing after having taken a bath; that she was fully clad in a house dress when she heard her husband call about 8:30 or 9:00 a.m.; that she went to the door and noticed that the coat of his pajamas had caught in the door and that the door was closed and locked; that she opened the door and when she did so she saw Frank Parker jump aside; and that when he observed her he said, "Good morning, Mrs. Quigley." At the time she testified her husband, Frank Quigley, was in the Allegheny County Workhouse in Pennsylvania.

When Troyana, one of the special agents for the American Express Company, talked with Quigley in Pittsburgh, the latter told him, "I got the travelers' checks at my house, they were delivered to me the day before we left for Pittsburgh."

On April 19, 1938, Van Bever received a telephone call from Parker at the Hartman Drug Store in the Medinah Club. Parker said, "Meet me at the LaSalle-Wacker Garage right away." Van Bever said, "Frank, what time have you got on your watch?" Parker said, "It is 10:20." Van Bever said, "I'll be there within fifteen minutes." Van Bever then called Keyes of the American Express Company on the telephone and proceeded toward the garage with a man named Long, con-

nected with the Burns Agency. Long remained outside. When Van Bever entered the garage Parker was about midway toward the rear thereof. He asked Van Bever if he had the money and Van Bever said that he had \$150. Van Bever asked Parker if he had the "paper" and the latter said, "Yes, here is the paper." Parker handed Van Bever a package wrapped in brown paper with a string around it, which was about four or five inches in length and a couple of inches wide. Van Bever looked inside the package and found some counterfeit travelers' checks. He asked Parker how many there were and Parker told him \$1,050 worth. Van Bever asked what the extra \$50 was for and Parker said, "That's for you." Van Bever handed Parker \$150 in cash, which Mr. Walsh of the American Express Company had given him, and started to leave. Parker called him back and handed him another package telling him that he wanted him to hold this package until Parker should call for it. Parker and Van Bever left the garage. When Van Bever got up on LaSalle street he saw Keyes there. Van Bever took a taxicab and went to the office of the American Express Company. Mr. White, the general manager of the Express Company, Mr. Walsh, the financial manager, Mr. Troyana, Mr. Eldridge and Mr. Keyes, special agents, were there, and Van Bever handed both parcels to Mr. Keyes. The package Parker had given Van Bever to keep for him contained counterfeit checks, all of the denomination of \$20.

Harold Keyes testified that he received a telephone call from Van Bever at about 10:35 on the morning of Tuesday, April 19, 1938; that he immediately left his office, intercepted Van Bever at Wacker drive, walked with him for about a block and then followed Van Bever to the LaSalle-Wacker Garage; that when he got to the

garage he saw Parker and heard a girl inside of the garage calling Parker's name; that he then went back across the street and waited until he saw Parker leave the garage and walk south on LaSalle street; that he then returned to the office of the American Express Company, where Van Bever handed him two packages; that one of these packages contained one hundred fifty-three \$20 counterfeit checks and the other contained five \$100 counterfeit checks and eleven \$50 counterfeit checks; and that Mr. Walsh and Mr. Eldridge of the American Express Company took down the numbers of the checks.

Joseph T. Walsh testified that on the morning of April 19, 1938, Van Bever came into the office of the American Express Company with two packages wrapped in brown paper, one secured with a piece of twine and the other secured with a piece of gummed tape; that the first package was immediately opened and it contained eleven \$50 counterfeit American Express Company travelers' checks and five \$100 American Express travelers' checks; and that he made a list of the numbers of these checks. Walsh testified further that he also made a list of the one hundred fifty-three \$20 counterfeit checks contained in the other package; and that the package containing the one hundred fifty-three \$20 counterfeits was rewrapped and returned to Van Bever and the other package containing \$1,050 in counterfeit checks was retained by him. Both of the foregoing lists were received in evidence.

Charles J. White, the general manager of the American Express Company, testified that he was in the office of the company on the morning of April 19, 1938, when Van Bever came in with two packages containing counterfeit travelers' checks; that both packages were wrapped in brown paper; that the small one contained five \$100 counterfeit checks and eleven \$50 counterfeit checks; that

the other package containing one hundred fifty-three counterfeit \$20 travelers' checks; that lists were made of the serial numbers of the checks in both packages; that one package was retained by the American Express Company; and that the other package containing one hundred fifty-three \$20 counterfeit checks, was returned to Van Bever.

Charles C. Troyana's testimony was to substantially the same effect in this regard as that of White, Walsh and Keyes.

Later in the day on April 19, 1938, when they were in Parker's office at 30 North LaSalle street, Parker asked Van Bever what he had done with the other package of checks and Van Bever told him that he had left it at the Medinah Club. Parker told Van Bever to get the package because he needed two or three of the checks as there was a man coming in for some. Van Bever then left Parker's office and met Keyes down on LaSalle street. Van Bever and Keyes went to the top floor of the building at 100 N. LaSalle street where Van Bever opened the package and took therefrom three of the counterfeit checks. Van Bever remained on LaSalle street a short time before he returned to Parker's office. When Van Bever got off the elevator at 60 N. LaSalle street, he saw Parker and Moran in the hallway with a package wrapped in brown paper, which one of them was handing to the other. Keyes testified that when Van Bever left the office of the American Express Company on the morning of April 19, 1938, after bringing the two packages of counterfeit checks there, he followed him to 30 N. LaSalle street and remained downstairs; that after twenty minutes or half an hour Van Bever came out of that building and signaled Keyes to follow him to the building at 100 N. LaSalle street; and that he and Van

Bever went up to the top floor of said building where Van Bever extracted three counterfeit travelers' checks from the package which he had with him.

Still later in the afternoon of April 19, 1938, Van Bever was again in Parker's office at 30 N. LaSalle street. At that time there was a typewritten letter on Parker's desk and after telling Van Bever to add something in writing at the bottom thereof, Parker said, "Well, tell him he can get this paper in 20's and 50's and 100's at 20%." After Van Bever had written a memorandum below the letter he asked Parker what name to use in signing same and Parker said it was all right to use any name. Van Bever said, "Will J. R. Harrison do?" Parker told him that that was fine and to use an address in care of Johnny Ahern's saloon. Then Parker asked Van Bever for one of the \$20 checks. After signing the name "Frank" to the typewritten portion of the letter Parker placed the counterfeit travelers' check with the letter in an envelope and put two 3c stamps on the envelope and wrote "Air Mail" thereon. Parker was about to leave the office to drop the letter in the chute when Van Bever said "Frank, you let me mail that, you're busy." Parker gave the letter to Van Bever to mail and he took it to Keyes, the American Express Company agent, who had it photostated.

Keyes testified that about 6 p.m. on April 19, 1938, Van Bever came to the office of the American Express Company and handed him a letter addressed to Mack Carlin, 1640 Ocean avenue, Brooklyn, New York; that Parker's address, 1618 Jonquil terrace had been on the upper left hand corner of the envelope, but that it had been "erased pretty well;" that he sent the envelope and its contents to be photostated; and that when the envelope and its contents were returned, he sealed the original

envelope after replacing the letter and counterfeit check therein and mailed it. Photostatic copies of the envelope, letter and counterfeit check were received in evidence. The typewritten letter just referred to reads as follows:

"Dear Mack:

Not having heard from you for quite some time thought I would drop a line to say hello. How are things in the big city? A friend of mine has something that I think you might be interested in, so I am having him write you relative to same. If interested kindly give him an air mail special at once so that he will not make other arrangements in New York. He is a very reliable person. Kindly tell John Popkin that I received the statement or engineer's report that he mailed me.

With best personal regards,  
Sincerely yours,

Frank."

Just below the typewritten letter appeared the following in handwriting:

"Enclosed please find sample. They come in 20-50-100 20 per cent. Let me know how many you can handle and in what denomination,

Yours truly,

J. E. Harrison,  
c-o Johnny Ahern,  
176 N. LaSalle Street."

Parker admitted that he dictated the typewritten portion of the foregoing letter and stated that Mack Carlin, to whom the letter was addressed, was an old friend of his, but that he knew nothing about the handwritten portion of the letter. He stated that the typewritten portion of the letter referred to air conditioning machinery.

On the evening of April 20, 1938, Parker took Van Bever to his apartment for dinner, where he met Mr.

and Mrs. George Moran. They were introduced to Van Bever by Parker as Mr. and Mrs. Hanley. After dinner Moran said he had a "meet" at the Belmont Hotel at 9 o'clock. Parker then drove Van Bever down to Clark and Division streets, where the latter alighted from the car. Van Bever notified three Burns detectives of the meeting at the Belmont Hotel about which Moran had spoken.

Harold C. Keyes testified that he went to the Belmont Hotel a little after 9 p.m. on April 20, 1938, and saw Moran leaning through the doorway of a black sedan talking to somebody; that he entered the hotel and saw Parker walking around the lobby with his hat off; and that later he saw Parker, Moran and another man enter an automobile.

On the night of April 20, 1938, Driscoll, Sexton and Quigley bought tickets at the Union Station and boarded a train for Pittsburgh at 11:15 p.m. Keyes went to the Union Station in response to a telephone call that he had received from one of his operatives and saw Driscoll, Sexton and Quigley purchase the railroad tickets and board the train. Troyana, another agent for the American Express Company, missed the Pittsburgh train but he took an airplane and arrived in Pittsburgh sometime before Driscoll, Sexton and Quigley did. Before leaving for Pittsburgh on April 20, Keller [Driscoll] and Sexton passed two \$50 counterfeit checks in Chicago, one at the Stetson Shoe shop on South Dearborn street and the other at Carson, Pirie, Scott & Company. These checks were received in evidence.

As soon as Troyana reached Pittsburgh he got in touch with the police there and with their assistance kept Keller, Sexton and Quigley under surveillance. They had cashed one \$100 counterfeit check and were arrested while

in the act of passing another \$100 counterfeit check. When they were arrested they had in their possession counterfeit checks in the face amount of \$21,050.

Late in the afternoon of April 21, 1938, Van Bever received a telephone call from Parker, who told him that there had been a "snatch" in Pittsburgh and asked Van Bever what he knew about it. Van Bever told him that he did not know anything about it and Parker then told Van Bever to meet him at Ray's Chop House on Illinois street in twenty minutes and bring with him the package of checks which Parker had left in his care. Van Bever met Parker at the appointed time and place and turned over to him the package containing the \$20 counterfeit travelers' checks which Parker had theretofore given him, and Parker said, "I have just talked to George, some son-of-a-bitch is going to get killed, there are too many people in this deal, what do you know about it?" Van Bever replied that he did not know anything about it. Parker then said, "What are you so nervous about? Quigley is O.K. Quigley is a stand-up-guy; nothing to worry about." Parker and Van Bever then drove south on the under-pass below Michigan avenue and Parker said, "I think Ross is the son-of-a-bitch that tipped this off, and if he did he is going to get killed." Van Bever said, "Well Frank, before you hurt anybody, I would be sure that you got the right man." They went into the Lower Deck Tavern on the lower level of Michigan avenue and Parker went to the telephone booth in the rear. When he returned he said he had just talked to George and George was on his way to the tavern. They had several drinks, during which time Parker made several trips to the telephone booth and Van Bever saw him go into the lavatory once or twice. Later than evening Parker telephoned Van Bever

and asked him to find out from his friend at the detective bureau how many of the counterfeit checks Keller, Sexton and Quigley had when they were arrested in Pittsburgh. He also asked him to come down and meet George but Van Bever told Parker that he was tired and was going to bed. That same evening Parker was arrested at 7:30 p.m. in Miss Springer's office at 30 N. LaSalle street. Moran was also arrested that evening at 11 p.m. at his apartment, 240 E. Delaware place.

On April 23, 1938, Van Bever with Charles J. White and Harold C. Keyes of the American Express Company and Detective Paradowski, went to the Lower Deck Tavern on the lower level of North Michigan avenue. Van Bever went inside while the others remained outside in the automobile. While he was in the tavern he made a search of the lavatory and found in a hole in the wall under the drain pipe from the lavatory, in the space back of the plaster board, a roll of counterfeit travelers' checks with a rubber band around it. He took it out exactly as he had found it and handed it to Keyes.

Keyes testified that he went with the aforementioned persons to the Lower Deck Tavern; that Van Bever entered same alone; that when Van Bever returned to the automobile from the tavern he gave him a roll of \$20 counterfeit checks, which he had found in the men's toilet room. The testimony of Charles J. White in this regard was substantially to the same effect.

On April 24, 1938, after Parker had been released on bond, he telephoned Van Bever and asked him to meet him at Ray's Chop House on Illinois street. Parker drove up in a Ford car, picked up Van Bever and they drove south under Michigan avenue to the Lower Deck Tavern. While they were in the tavern Parker said to Van Bever, "You are a lucky son-of-a-bitch, we have

looked into and it does not look like you are the tip-off man at all."

On the early afternoon of April 26, 1938, Parker went to Van Bever's office in room 316, 520 N. Michigan avenue, Parker having made this appointment by telephone. When Van Bever entered the office Parker was already there and asked, "Is there anything new?" Van Bever said, "No there is not anything new." Parker said, "Well, stick around a little bit, George is on his way down." In a little while Moran entered the office and said "hello." Moran then said, "You haven't anything to worry about, they have not anything on us." Parker then said, "I think I will go to Pittsburgh." Moran said, "Don't go or I don't think I would go, or something to that effect."

On April 28, 1938, Moran telephoned Hanson and asked him to go to Jake's book. When Hanson got there Moran said that he supposed Hanson had read the papers. Hanson said that he had read them and that he supposed that they were all "washed up." Moran then said, "No, we will take care of you, but you better destroy some of those copies you have up there." He told Hanson to hide the plates so nobody could get hold of them. Hanson agreed to do so. About the middle of August Carl Silver called Hanson and asked him for the plates from which he had made the checks. Hanson told him that he had already melted them. Silver asked him if he had any of the metal left and Hanson said that he had the melted zinc. Silver then told him to take it down in front of 727 S. Dearborn street and give it to Moran. Hanson went to the place designated with the can of metal and handed it to Moran, who was in the car with several other men, and Moran handed him \$2.

When Sexton and Keller were brought to trial in Pitts-

burgh they each entered a plea of guilty and were sentenced there. Both Sexton and Keller testified upon the trial of this case that Van Bever had given them the counterfeit checks, telling them that they were genuine American Express Company travelers' checks, which he had purchased at a discount at a bankruptcy sale, and that he did not want to dispose of them in his own name, but that he would give Sexton, Keller and Quigley a commission if they would sell them for him; and that Van Bever also told them that he desired their assistance in order to avoid any civil action that might be brought against him. They testified further that Sexton assumed the name of Sloan, Keller assumed the name of Driscoll and Quigley assumed the name of Carpenter at the suggestion of Van Bever.

Moran in his testimony denied that he had any part in the conspiracy. Parker testified in effect that he was a substantial business man; that he owned gold mines in Colorado and two Chicago breweries and denied that he had any part in the conspiracy. A certified transcript of the record of conviction in the Criminal court of Cook county of George Moran in 1917 of the crime of robbery and a certified transcript of the record of conviction in the Criminal court of Cook county of Frank J. Parker in 1914 of the crime of burglary were received in evidence.

Defendants' contentions as stated in their brief are as follows:

"It is respectfully contended that the verdict rests entirely upon the uncorroborated testimony of accomplices.

"Before the trial in the case at bar, while Sexton, Keller and Quigley were serving jail sentences in the East, the state brought Parker, Moran and Hicketts to trial before Judge Fardy in the Criminal court of

Cook county. On the same evidence produced here a jury found Parker, Moran and Hicketts not guilty. An offer to prove said fact in support of a claim of former jeopardy on behalf of these defendants was denied by the trial court.

"It is also contended that the court erred in other rulings concerning the evidence and in the giving and refusing of instructions.

"Further that the acquittal of Sexton and Keller as principals precludes the guilt of Parker and Moran as accessories. Also we present a federal question, claiming that due process of law was not afforded the defendants as guaranteed by the 14th Amendment to the Constitution of the United States."

The evidence shows conclusively that the defendants Parker and Moran entered into a conspiracy with others to forge and counterfeit checks purporting to have been issued by the American Express Company and to publish and pass said forged and counterfeit checks with intent to defraud such persons as could be induced to accept them and pay the conspirators money or property therefor. There is an abundance of evidence in the record to show beyond any reasonable doubt that Parker, Moran and Silver were the prime movers in the conspiracy.

There is no merit in defendants' contention that their conviction resulted entirely from the uncorroborated testimony of accomplices. It clearly appears from the evidence that Van Bever never entered into the conspiracy and that he therefore never became an accomplice. According to Van Bever shortly after Parker broached the counterfeit scheme to him, he notified his friend Paradowski, the police officer, who in turn related the facts to the officials of the American Express Company. That company employed Van Bever as an investigator to keep in touch with the situation and follow it through and

to keep the representatives of the Express Company informed as to the results of his investigation as it progressed. He followed the instructions and directions given him and kept the representatives of the American Express Company fully advised of his activities at all times so that Harold C. Keyes and other Express Company agents, as well as the Burns operatives could observe his contacts with those engaged in the conspiracy. Neither knowledge nor concealment of knowledge that a crime is being or is about to be committed can constitute one an accomplice, and the generally accepted test as to whether a witness is an accomplice is whether he himself could have been indicted for the offense, either as principal or as accessory. (*People v. Hrdlicka*, 344 Ill. 211.) Van Bever's entire career, including all the circumstances bearing upon his association with some of the defendants, including Parker and Moran, was placed before the jury and the question of his credibility was purely for the jury. His testimony was corroborated in many material and essential respects by that of Harry C. Eldridge, Harold C. Keyes, Charles C. Troyana, Joseph T. Walsh and Charles J. White, highly reputable officials and representatives of the American Express Company, as well as by numerous documentary exhibits in evidence.

It is true that the witnesses, Hanson, Bruno and Ahrens were accomplices and the rule is that the testimony of an accomplice is competent evidence and may be sufficient to sustain a conviction, although uncorroborated, if it is of such a character as to prove guilt beyond a reasonable doubt, but is always subject to grave suspicion and should be acted upon with great caution. There was some corroboration of Hanson's testimony and we think that his testimony, as well as that of Bruno and Ahrens was of such a nature that the jurors were fully warranted

in believing same. Their evidence establishes beyond a reasonable doubt the actual counterfeiting phase of the conspiracy.

Defendants complain that the testimony of the witness Van Bever was incompetent and prejudicial in the following instances: (1) "Frank Parker said to me, well, I knew Ollie for a number of years before he went to the penitentiary in Stateville. I said I knew Ollie when he used to run around with— Mr. Stewart: Now, your Honor, we move to strike that, not material what he knew about Ollie Berg. Ollie Berg is not figuring in this case. The Court: Well, I don't see how it is material. Mr. Wright: It is not as to Ollie Berg, except it is a conversation that shows the development of their acquaintanceship. Mr. Stewart: I object and move to strike it out, your Honor. The Court: Strike it out." (2) "Q. Tell the Court and jury what was said and done there at that time. A. Frank Parker said to me, 'There is a deal on some paper. It is going to be a lot of money made. I had a deal a year or two ago,—' Mr. Stewart: I move to strike that out, that reference to any deal two or three years ago. That could not be material here. The Court: Strike it out." (3) "Parker then came back to the table or the booth. Speedy said 'I wonder where I could get hold of a good printer? I was there with the Yellow Kid Weil today. I got to get a printer.' That is about all of that transaction. Mr. Stewart: Your Honor, may we have that stricken about being with Yellow Kid Weil. The Court: Strike it out."

It will be noted that in each instance the foregoing testimony was immediately stricken upon the objection and motion of defendants' counsel. In the last two instances quoted the answers of the witness were not made in response to direct questions asked for the purpose of

eliciting the statements made by Van Bever and it cannot be said that any of the foregoing answers made by him were of such a prejudicial nature as to warrant reversal in view of the overwhelming evidence of the guilt of plaintiffs in error.

There is no merit to the contention of plaintiffs in error that their counsel were unduly limited in their cross-examination of Van Bever, Hanson, Bruno and Ahrens. Numerous instances are pointed out as to which it is claimed that the trial court improperly sustained objections to questions asked the aforesaid witnesses on cross-examination. We have carefully examined all the instances of undue limitation of cross-examination complained of and find that the questions asked were either argumentative or otherwise improper or concerned matters which were immaterial or had already been covered. Defendants' counsel were not only not unduly limited in their cross-examination but the record discloses that they were allowed the widest latitude consistent with the rules governing proper cross-examination. We find no basis in the record for the suggestion of counsel for plaintiffs in error that the jury might well have received the impression from the conduct and rulings of the trial judge that he was "on the side of the State."

Plaintiffs in error contend that nine of the fifteen instructions proffered by the state were erroneously given to the jury by the trial court and that the trial court also erred in refusing to give to the jury five instructions proffered by the defendants. We have carefully examined all the instructions given by the court and are satisfied that the jury was fully and fairly instructed as to the law applicable to every phase of this case, both from the standpoint of the prosecution and the defense. To analyze and discuss each of the "given" in-

structions objected to would serve no useful purpose and would only further lengthen this already long opinion. Defendants' refused instruction No. 42 is as follows: "A person cannot be put into a crime by the acts and conduct of other persons alone." The court did not err in refusing to give this instruction since it merely stated an abstract principle of law and in any event it was covered by other instructions given to the jury. As to the other four instructions which the court refused to give, it is sufficient to state that they did not apply to any theory of defense of Parker or Moran. They dealt solely with the defense of entrapment advanced by defendants Sexton and Keller. These instructions could not have pertained to Parker and Moran since both of them denied that they knew anything about the counterfeit checks, that they had any knowledge of the conspiracy or that they participated in it.

It is also contended that the trial court erred in refusing to permit plaintiffs in error to offer proof of former jeopardy. Sometime prior to the trial of the case at bar, while Sexton, Keller and Quigley were serving sentences in Pennsylvania imposed upon them for passing the American Express Company checks in Pittsburgh, Parker, Moran and Hicketts were indicted in the Criminal court of Cook county on a charge of forging and uttering the check which was cashed at the Stetson shop in Chicago on April 20, 1938. They were brought to trial in the Criminal court before the same trial judge who tried this case and acquitted. In our opinion there was no former jeopardy and neither was there any proper offer of proof of former jeopardy.

It is idle to urge that the acquittal of Sexton and Keller precluded the guilt of Parker and Moran as accessories. Parker and Moran were indicted, tried and

convicted as principals and the evidence clearly shows their guilt as such.

Convinced as we are that plaintiffs in error received a fair trial and that the record discloses that no reversible error was committed upon the trial, the judgment and sentence of the Criminal court of Cook county as to defendants Frank Parker and George Moran are affirmed.

AFFIRMED.

FRIEND, P. J., and SCANLAN, J., concur.





FILED

APR 23 1942

JAMES EDWARD GUNLEY  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, A. D. 1941.

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**No. 1013**

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FRANK PARKER and GEORGE MORAN,  
*Petitioners,*  
*vs.*

THE PEOPLE OF THE STATE OF ILLINOIS,  
*Respondent.*

---

**PETITION FOR REHEARING**

---

WM. SCOTT STEWART,  
*Counsel for Petitioners.*



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MAY IT PLEASE THE COURT:

We respectfully pray that your Honors again examine the points submitted in our petition for certiorari in the light of such authority as *Mooney v. Holohan*, 294 U. S. 103, holding that a criminal conviction procured by the state prosecuting authorities solely by the use of perjured testimony known by them to be perjured and knowingly used by them in order to procure the conviction, is with-

out due process of law and in violation of the Fourteenth Amendment.

As is shown by the record herein, the principal witness for the prosecution was hired by the complaining witness to secure evidence, and it is our contention that this purchased testimony was perjury obvious as such upon its face.

Respectfully submitted,

WM. SCOTT STEWART,  
*Counsel for Petitioners.*

CERTIFICATE OF COUNSEL.

Wm. Scott Stewart hereby certifies that this petition for rehearing is presented in good faith and not for delay.

WM. SCOTT STEWART,  
*Counsel for Petitioners.*

